SUPREME COURT, U.S.
FILED
FEB 16 1995
OFFICE OF THE CLERK

No. 94-1237

In The

Supreme Court of the United States

October Term, 1994

KEYSTONE CHAPTER, ASSOCIATED BUILDERS AND CONTRACTORS, INC., IN REPRESENTATION OF ITS MEMBERS,

Petitioners,

vs.

SECRETARY OF LABOR & INDUSTRY FOR THE COMMONWEALTH OF PENNSYLVANIA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

MOTION OF THE ROOFING CONTRACTORS ASSOCIATION INDUSTRY FUND, ET AL. FOR LEAVE TO FILE BRIEF AND BRIEF OF AMICUS CURIAE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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DESCRIPTION OF INTEREST OF AMICUS CURIAE

Amici are various contractor associations ("the Associations") which represent the interests of contractors who perform or seek to perform work on construction projects covered by Pennsylvania's Prevailing Wage Act, 43 P.S. § 165-1 *et seq.* (Purdon's 1992). The Associations represent their members' interests on a wide range of issues, including labor relations, industry relations, government affairs, and market developments. The contractors herein represented have entered into collective bargaining agreements with various unions which represent employees of the contractors. The collective bargaining agreements establish certain wage rates and benefit rates that the contractors must pay to or on behalf of their unionized employees.

In filing an amicus curiae brief, the Associations are acting to inform this Court not only of the soundness of the court of appeals' judgment that Congress did not intend ERISA to preempt the Prevailing Wage Act but also of the benefits of the Act and the harm which will result to workers on covered projects and to amici's members if the decision of the court below is reversed.

The Prevailing Wage Act provides for minimum wage rates and benefit rates that contractors must pay to their employees on public works projects. The goal of the Act is to ensure that workers on the covered projects are fairly compensated. Such protection is necessary because Pennsylvania law requires that contracts for such work be awarded in open bidding to the lowest responsible bidder. In the absence of the Prevailing Wage Act, the non-unionized contractors would be permitted to pay their employees substandard wages and benefits on covered projects.

In addition, nonunion contractors would be permitted to

utilize substandard wage and benefit rates when calculating their bids, effectively excluding unionized contractors from competition on those projects. Because of the many apprenticeship programs operated by unionized contractors in conjunction with the trade unions, these contractors as a rule employ the most highly skilled individuals in their respective trades. Thus, exclusion of unionized contractors from bidding on these projects would deprive the Commonwealth and its citizens of the benefits of that highly skilled workforce. The law represents a fair and reasonable method of equalizing the labor costs for all employers who bid on covered projects, without regard to their union affiliations.

Amici believe that they bring a unique perspective to the Court in representing the interests of contractors who are bound by the mutually beneficial collective bargaining process to pay certain minimum compensation rates to their employees. This perspective permits amici to offer certain insights and policy considerations that will be helpful to this Court in its review of the Petition for a Writ of Certiorari.

CONSENT OF THE PARTIES

Petitioner, Keystone Chapter, Associated Builders and Contractors, Inc. ("Keystone ABC") and respondent Thomas P. Foley, the Secretary of Labor and Industry for the Commonwealth of Pennsylvania ("Secretary") have consented to the filing of this brief. Communication Workers of America, AFL-CIO, District 13 ("CWA") and Bell Telephone Company of Pennsylvania, ("Bell"), appellees in the court below, also have consented to the filing of this brief. Such consents will be filed concurrently with this brief.

STATEMENT OF THE CASE

The Associations adopt the Statement of the Case set forth in respondent Secretary's Brief in Opposition to the Petition for Writ of Certiorari, as supplemented by the discussion below.

Pennsylvania's Prevailing Wage Act, 43 P.S. § 165-1 *et seq.* (Purdon's 1992), requires the Commonwealth and its political subdivisions to include in every contract for construction, reconstruction, demolition, alteration and/or repair a specification that workmen on those projects shall be paid the prevailing minimum wage rate. 43 P.S. § 165-4. In determining the amount of the prevailing wage applicable to a given project, the Secretary is required to consider not only the prevailing cash wage rate but also the amount contributed for employee benefits pursuant to a bona fide collective bargaining agreement. 43 P.S. § 165-7. The law does not apply to any other public or private construction projects within the Commonwealth.

In April, 1992, Keystone ABC brought suit alleging that the Secretary's *administration* of the Prevailing Wage Act is preempted by the Employee Retirement Income Security Act, 29 U.S.C. § 1101 *et seq.* ("ERISA"). Keystone ABC's amended complaint alleged that the manner in which the Secretary considered contributions toward fringe benefits in determining and enforcing the Prevailing Wage Act "relates to" employee benefit plans as defined in ERISA and therefore is superseded by § 514(a) of ERISA, 29 U.S.C. § 1144(a). Keystone ABC did not challenge the constitutionality of the Prevailing Wage Act or its implementing regulations at 34 Pa. Code § 9.101 *et seq.*

In August, 1992, Bell and CWA filed a similar complaint, alleging that the manner in which the Secretary considered contributions toward fringe benefits in determining and enforcing the Prevailing Wage Act "relates to" employee benefit plans as

defined in ERISA and therefore is superseded by § 514. In addition, Bell and CWA complained that because the Prevailing Wage Act requires consideration of employer and employee contributions for employee benefits in determining the minimum wage rate, the entire prevailing wage scheme established by the Prevailing Wage Act relates to and is preempted by ERISA.

On July 30, 1993, Judge Edwin M. Kosik granted motions for summary judgment filed by the plaintiffs in both actions. In so doing, the court not only struck down the method used by the Secretary to enforce the Act but also concluded that the Act, its accompanying regulations, and the Declaratory Order of the prevailing Wage Appeals Board dated April 13, 1992 were preempted by ERISA. *Keystone Chapter, Associated Builders & Contractors, Inc. v. Foley,* Civ. No. 92-0459; *Bell Telephone Co. v. Foley,* Civ. No. 92-1105 (E.D. Pa. July 30, 1993).

The court below reversed the district court's invalidation of the Act and its implementing regulations, concluding that they do no more than "establish a system of wage regulation [for Commonwealth construction projects] that neither burdens nor influences the benefits or structure of employee benefit plans, nor do they interfere with the uniform administration of such plans." (Pet. App. C, 44a-45a). However, the court below affirmed the district court's invalidation of the Declaratory Order solely because it established a presumption that contributions to ERISA benefit plans are bona fide (Pet. App. C, 25a).

REASONS FOR DENYING THE WRIT

The question presented by Keystone ABC's petition is whether Congress, in its effort to reserve to the federal government exclusive regulation of employee benefit plans through ERISA's preemption provision, intended to preclude state and local governments from specifying the minimum

compensation that workers on their construction projects are to be paid. Petitioner contends that the court below erroneously answered that question in the negative and that its decision is in conflict with this Court's many decisions concerning the intended sweep of ERISA § 514(a) and with the decision of the United States Court of Appeals for the Second Circuit in *General Electric Company v. New York State*, 891 F.2d 25 (2d Cir. 1989).

As discussed below, this case does not present any justification for the exercise of this Court's certiorari jurisdiction because the decision and opinion of the court below do not conflict with Supreme Court precedent concerning ERISA preemption and implicitly agree with much of the Second Circuit's reasoning in *General Electric*. Moreover, as discussed in the last section of this brief, the Associations believe that the petition should be denied because there is an additional, more compelling ground for affirming the judgment of the court below. Specifically, ERISA represents an exercise of Congress' legislative authority under the Commerce Clause. As such, ERISA was not intended to and constitutionally cannot preempt the Commonwealth of Pennsylvania from engaging in the proprietary act of establishing wage and benefit standards to be paid by its contractors to workers employed on its construction projects.

I.

ASSUMING ARGUENDO THAT ERISA § 514 APPLIES TO THE ACT AND ITS REGULATIONS, PETITIONER HAS NOT DEMONSTRATED ANY ERROR IN THE DECISION OF THE COURT BELOW NOR ANY CONFLICT AMONG THE CIRCUITS.

Whether § 514 preempts the Pennsylvania Prevailing Wage Act, its implementing regulations, or the April 13, 1992,

Declaratory Order of the Prevailing Wage Appeals Board ultimately is a question of Congressional intent. *Metropolitan Life Insurance Company v. Massachusetts*, 471 U.S. 721, 747 (1985). This Court repeatedly has cited the comments of Representative Dent and Senator Williams (the House and Senate sponsors of ERISA) as the best evidence of the intended sweep of § 514. *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85 (1983); *Fort Halifax Packing Co. v. Coyne*, 107 S. Ct. 2211, 2216 (1987). Both legislators noted that Congress' purpose in enacting § 514 was to preempt the field for federal regulation, "thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans." *Fort Halifax*, 107 S. Ct. at 2216.

With these comments in mind, Justice Brennan observed in *Fort Halifax:* "We have not hesitated to enforce ERISA's pre-emption provision where state law created the prospect that an employer's administrative scheme would be subject to conflicting requirements." 107 S. Ct. at 2216. Justice Brennan emphasized that the aim of § 514 is to ensure that employee benefit plans covered by ERISA will be governed by only a single set of regulations, thereby avoiding "a patchwork scheme of regulation [which] would introduce considerable inefficiencies in benefit program operation [and] which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them." 107 S. Ct. at 2217.

In resolving the question of whether Congress intended that ERISA preempt Pennsylvania's Prevailing Wage Law, it is important to recognize that the sole and exclusive goal of the Prevailing Wage Act is "to protect the workmen employed on a government project from payment of substandard wages, keeping in mind that the lowest responsible bidder is customarily awarded public contracts." *Keystone Chapter of Associated Builders & Contractors, Inc. v. Pennsylvania Department of Labor & Industry*, 414 A.2d 1129, 1133 (Pa. Cmwlth. 1980). As

the Commonwealth Court noted in *Keystone ABC*, "by guaranteeing such protection, the legislation helps to assure the employment of skilled craftsman on the job .... The Act's purpose is not to preserve jobs for local craftsmen, but to assure the local craftsmen who are employed standard wages ...." *Id.* *See also Kulzer Roofing, Inc. v. Pennsylvania Department of Labor & Industry*, 450 A.2d 259, 261 (Pa. Cmwlth. 1982).

In order to accomplish that goal, the Prevailing Wage Act requires the Secretary of Labor to determine the general prevailing minimum wage in a locality by reference not only to the actual wages paid for such work, but also to the employer and employee contributions for employee benefits paid pursuant to a bona fide collective bargaining agreement. Section 9.105 of the regulations implements this statutory requirement by providing that for purposes of making a determination of the general prevailing minimum wage rates in a locality, the Secretary may ascertain and consider the wage rates and employee benefits established by collective bargaining agreements. 34 Pa. Code § 9.105(a). That section also requires the Secretary to consider statements by contractors and subcontractors, whether unionized or not, showing wage rates paid on projects within the locality, 34 Pa. Code. § 9.105(c)(3), and any other information pertinent to the determination of prevailing minimum wage rates. 34 Pa. Code § 9.105(c)(4). Finally, § 9.105(d) requires the Secretary to conduct a continuing program to obtain wage rate information, including information relating to contributions for fringe benefits, from contractors, contractors' associations, labor organizations, public officials, and other interested parties. 34 Pa. Code § 9.105(d).

In a previous challenge to the Commonwealth's right to impose a prevailing wage requirement on contractors with whom it does business, petitioner Keystone ABC complained that the Act's requirement that fringe benefit contributions specified in

collective bargaining agreements be considered in setting the prevailing wage rate denied the ABC's nonunion members equal protection of the laws because they did not have such agreements. *Keystone ABC v. Pennsylvania Department of Labor & Industry, supra.* In rejecting the ABC's challenge, the Commonwealth Court explained that §§ 9.105(c)(3) and (d) of the regulations do not require the Secretary to include the fringe benefit contributions specified in collective bargaining agreements in the prevailing rate if the collected data shows nonunion construction to be the dominating segment of the industry. In that instance, only the contributions for fringe benefits paid by the nonunion contractors, if any, would be included in the prevailing rate. If no such benefits were provided, fringe benefits would have no effect on the prevailing rate. 414 A.2d at 1133. The court emphasized, however, that if union contractors perform the majority of the construction work in the county, collective bargaining agreements certainly should determine the prevailing wage rates. According to the court, "it is a proper legislative prerogative to mandate that fringe benefits included in a bargaining agreement should be considered as part of the total wage package paid the union employees because such benefits are considered a part of the wage package in the marketplace." 414 A.2d at 1133.

The April 13, 1992, Declaratory Order of the Prevailing Wage Appeals Board also stressed that, given the cost and importance of fringe benefits in today's world, a prevailing rate which includes hourly wage rates and if prevailing, bona fide contributions for fringe benefits, is the only way of ensuring that the compensation paid to workers on its projects is not substandard.

As noted above, the Associations contended in the court below that the Act, the implementing regulations and the Declaratory Order were not subject to ERISA preemption

analysis because they represent proprietary rather than regulatory acts of the Commonwealth.[1] However, assuming *arguendo* that ERISA § 514 applies to those laws, the court below was correct in concluding that those requirements should not be preempted. As the court noted, they do not bear any direct relationship to employee benefit plans in that they are not intended to nor do they regulate the affairs of employee benefit plans operating within the Commonwealth; they do not exempt such plans from any particular state action; and they do not otherwise single out employee benefit plans for special treatment (Pet. App. C, 28a-29a).

The court below also correctly noted that although the Act contains a reference to ERISA plans, it does not require the existence of employee benefit plans in order to be effective. Again assuming that the Act is subject to ERISA § 514, the court below properly relied upon this Court's decision in *Mackey v. Lanier Collection Agency & Serv.*, 486 U.S. 825 (1988) in concluding that the Act would conflict with ERISA if it counted all remuneration to workers *except* benefits from ERISA plans in calculating the prevailing rate (Pet. App. C, 29a-30a). Thus, contrary to petitioner's contention, the opinion of the court below in no way conflicts with this Court's many decisions concerning the scope of ERISA § 514.

The petitioner also is incorrect in suggesting that the decision of the court below conflicts with the decision of the Second Circuit in *General Electric Company v. New York State,*

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1. The court rejected that argument, concluding that the Commonwealth was acting "with an interest in setting policy", not as a proprietor and that the law was intended to "establish labor standards" under its "traditional police power" (Pet. App. C, 27a, n.14). In so concluding the court below failed to recognize that this "policy-setting" conduct was limited to the Commonwealth's own projects.

supra. Quite to the contrary, the court below implicitly agreed with the Second Circuit's analysis when it concluded that the Secretary's previous "line item" approach to enforcement would be preempted by ERISA (Pet. App. C, 39a). In the view of the court below, so long as "line item" compliance with the benefits component is not required, the law does not require or encourage an employer to provide certain benefits, to alter the manner in which it provides benefits, or even to provide benefits at all. *Id.* p. 37a. On that basis, the court properly distinguished its decision from the *General Electric* decision and from decisions of the Ninth and Tenth circuits in *Local Union 598 v. J.A. Jones Constr. Co.*, 846 F.2d 1213 (9th Cir.), *aff'd*, 488 U.S. 881 (1988), and *National Elevator Indus., Inc. v. Calhoun*, 957 F.2d 1555 (10th Cir.), *cert. denied*, 113 S. Ct. 406 (1992), respectively.[2] Thus, in no way can it be said that the decision of the court below is in substantial conflict with decisions of other courts of appeals.

As the opinion of the court below makes clear, the complaint of Keystone ABC employers in this case really does not concern regulation of their employee benefit plans at all. Rather, they object to the prevailing wage requirements because the requirements can have the effect of requiring contractors who choose to do business on Commonwealth projects to pay their employees additional wages.[3] This is true because the law does not require that any sort of fringe benefits be provided. Indeed, so long as the wage rate specified is greater than the rate which the petitioner's members pay their employees, the law would have

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2. The court below also properly noted that the Second Circuit's objection to the administrative burden placed upon employers attempting to comply with the benefits portion of the law appeared to stem from the fact that the New York law required "line item" compliance with the benefits specification (Pet. App.C, 40a-41a, n.22).

3. Of course, if the Secretary determines that in a given locale their compensation package prevails, the law will have no effect on their employee compensation costs.

the same effect (albeit to a lesser degree) even if the law did not permit consideration of fringe benefits.

The following example illustrates the above proposition. Assume that the members of the Keystone ABC compensate their workers at the rate of $10.00 per hour in wages and $5.00 in fringe benefit contributions. Assume further that, for a given project, the Secretary determines that the wage rate prevailing in the locale for such work (without regard to fringe benefit contributions) is $13.00 per hour. In such a case, the ABC members would have the same complaint regarding the law even though fringe benefits are not considered; namely, that they will be forced to eliminate their fringe benefit packages and pay their workers more in wages in order to remain competitive. Indeed, it is quite likely that in such a situation, the ABC members would claim that the state must allow them to credit their fringe benefit costs towards satisfaction of the wage requirement in order to avoid the adverse effect of the law on their employee benefit plans. Of course, by so doing, they would invite the very sort of fringe benefit record-keeping against which they now protest.

Precisely because in today's world fringe benefits constitute a valuable component of employment compensation, the specification of any wage rate, with or without regard to fringe benefits, will create the same problem for a contractor who pays his employees less than the specified wage because in all likelihood he does provide those employees with fringe benefits. Of course, as noted by the court below, any contractor who desires to avoid the impact of those requirements can do so simply by choosing not to bid on the Commonwealth's projects (Pet. App. C, 39a, n.19).

In summary, Pennsylvania's prevailing wage requirements are nothing more than a mechanism employed by the Commonwealth to ensure that workers on its projects are fairly compensated. This mechanism is especially important given the

fact that Pennsylvania law requires the Commonwealth to award its construction contracts to the lowest responsible bidder. The Prevailing Wage Act's requirement that the cost of fringe benefits be considered in determining what rate of compensation is fair represents an acknowledgment by the Commonwealth that fringe benefits generally are a valuable part of an employee's compensation. The fact that some employers who choose to work on the Commonwealth's construction projects may have to pay their workers more in wages because of the particular make-up of their fringe benefit packages does not represent the kind of "relationship" to employee benefit plans that Congress intended to prohibit when it enacted ERISA. As the court below properly noted, "ERISA's preemption clause aims 'to ensure benefit plans will be governed only by a single set of regulations,' *FMC Corp. v. Holliday,* 498 U.S. 52, 60 (1990), not to bestow upon employers a uniform regulatory and economic environment for all their activities across the country." (Pet. App. C, 35a-36a).

II.

AS COMMERCE CLAUSE LEGISLATION, ERISA WAS NOT INTENDED TO AND CONSTITUTIONALLY CANNOT PREEMPT THE COMMONWEALTH OF PENNSYLVANIA FROM ESTABLISHING WAGE AND BENEFIT STANDARDS TO BE PAID BY ITS CONTRACTORS TO WORKERS EMPLOYED ON ITS CONSTRUCTION PROJECTS.

Even if the Court were to grant certiorari, the Associations submit that the Court would not reach the issue raised by petitioner. Rather, as discussed below, it would conclude that the Act and its implementing regulations are not preempted by ERISA because they represent proprietary rather than regulatory acts of the Commonwealth.

It is clear from the above description of the law and its

purpose that the Commonwealth's prevailing wage requirements are not intended to nor do they in fact "regulate" within the field of employee benefits because they are limited in application to employers who choose to work on the Commonwealth's construction projects. As this Court recognized in *United Building and Construction Trades Council of Camden County v. City of Camden*, 465 U.S. 208 (1984), this distinction between the state acting as a regulator and the state acting as a proprietor is critical for purposes of Commerce Clause preemption analysis. There the Court noted: "The Commerce Clause acts as an implied restraint upon state regulatory powers. . . . When the State acts solely as a market participant, no conflict between state regulation and federal regulatory authority can arise." 465 U.S. at 220. *Camden County* involved a challenge to resident hiring requirements applicable only to Camden County projects. Because of the above limitation on Congress' power under the Commerce Clause, the Court concluded: "Camden may, without fear of violating the Commerce Clause, pressure private employers engaged in public works projects funded in whole or in part by the city to hire city residents." 104 S. Ct. at 1029.

The Court reiterated this distinction recently in *Building & Construction Trades Council v. Associated Builders & Contractors*, 113 S. Ct. 1190 (March 8, 1993). In that case, the Massachusetts Chapter of the Associated Builders and Contractors challenged the Massachusetts Water Resources Authority's right to impose a project labor agreement on the Boston Harbor clean-up project on the grounds of ERISA and National Labor Relations Act preemption. The trial court rejected the ABC's ERISA challenge, concluding that ERISA was not intended to prohibit a state or local authority from requiring contractors to participate in identified employee benefit plans on one of their projects. *See Associated Builders & Contractors v. MWRA*, 935 F.2d 345 (1st Cir. 1991). The ABC persisted in its claim that the NLRA preempted the contractual requirement, however, arguing that the requirement constituted state

regulation of an area that Congress intended to be left for determination by the free play of the economic forces of management and labor.

This Court acknowledged that the Massachusetts Water Resource Authority's requirement constituted direct interference within this protected area of labor-management relations insofar as any persons seeking to do business on the project were concerned. Nonetheless, the Court concluded that the State's action was not preempted because it constituted proprietary acts of the state rather than regulation within a protected zone. 113 S. Ct. at 1196.

The Court went on to hold that so long as the State's procurement activities are not used for regulatory purposes, the State should be free to impose the same requirements on its contractors that a private purchaser lawfully may impose. 113 S. Ct. at 1198. Importantly, the Court noted that even though such requirements may force government contractors to alter their mode of operation, those contractors can avoid the impact of such requirements by choosing not to do business with the State. 113 S. Ct. at 1198.

Building & Construction Trades Council v. ABC concerned a single project specification. However, on June 9, 1993, the Ninth Circuit Court of Appeals did not hesitate in applying that analysis to a section of Oregon's Prevailing Wage statute which, like Pennsylvania's, applied only to state and local public works projects. *Babler Brothers, Inc. v. Roberts,* 995 F.2d 911 (9th Cir. June 9, 1993). In that case, the appellants contended that the statute interfered with collective bargaining relationships because it did not establish an across the board minimum standard applicable to all employers and that enforcing the statute in today's world had the effect of making it more difficult for non-union contractors to bid on public jobs. According to the appellants, the statute interfered with collective bargaining

relationships by weighing in on the side of the union as opposed to nonunion contractors on public jobs. 995 F.2d at 915-16.

The Ninth Circuit rejected appellants' preemption claim, explaining:

> We believe that these concerns are adequately addressed by the Supreme Court's recent decision in *Associated Builders.* As in *Associated Builders,* the State here has not endeavored to *regulate* the bargaining relationship of employers and employees. Rather, the State is enforcing prescribed working conditions on public projects in which the State and local jurisdictions have a proprietary interest. In *Associated Builders,* Massachusetts restricted bidding to union contractors and subcontractors and the Court held the restriction was not pre-empted. The obstacle to non-union bidding under the Oregon statute cannot possibly be as great as the obstacle imposed in Massachusetts by the requirement that all contractors on the job be signatory to a collective bargaining agreement. Accordingly, we conclude that the Oregon statute is not pre-empted by federal labor law. Any remedy for the appellants is to be found in the legislature and not in the federal courts.

995 F.2d at 916 (emphasis added). The Ninth Circuit recently reaffirmed the *Babler* analysis in *McCullom v. Roberts,* 17 F.3d 1219, 1223 (9th Cir. 1994).[4]

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4. In *Lott Constructors, Inc. v. Camden County Board of Chosen Freeholders,* 1994 WL 263851 (D. N.J. 1994), the U.S. District Court for the

(Cont'd)

Pennsylvania's prevailing wage requirements similarly do not constitute regulation within the zone protected by § 514 of ERISA. Rather, the requirements have the sole purpose and effect of ensuring that workers on the Commonwealth's projects are fairly compensated. Although they are codified requirements, they do nothing more than establish uniform contract requirements for the Commonwealth's construction projects. Admittedly, contractors who have wage and benefit costs which do not match the wage and benefit specifications on a given project will have to alter the wage component or benefit component of their compensation package if they desire to participate on the project. However, as the Supreme Court noted in *Building & Construction Trades Council v. ABC,* any contractor can avoid the impact of those requirements by choosing not to do business on the Commonwealth's construction projects.

Viewed in this light, Pennsylvania's prevailing wage requirements clearly are not the type of state action with which Congress was concerned when it enacted ERISA. Just as Congress did not intend to prohibit the Commonwealth from establishing wage and benefit standards for its own workers, so also it did not intend nor constitutionally could it have intended to prohibit the Commonwealth from establishing wage and benefit standards applicable to workers employed on its projects by independent contractors. *BCTC of Camden County,* 104 S. Ct. 1028 ("for purposes of the Commerce Clause everyone employed on a city public works project is . . . 'working for the City' "); *see also Lott Constructors, Inc. v. Camden County Board of Chosen Freeholders, supra.*

(Cont'd)

District of New Jersey extended this distinction to ERISA preemption, upholding a Camden County resolution that workmen employed on all of its projects be paid specified wages and benefits in accordance with a specified project labor agreement. *Id.* at *18.

CONCLUSION

For all of the above reasons, this Court should deny the petition.

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